



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

MICHAEL COREY FLUKER,  
Plaintiff,

vs.

LESLIE SIMMONS et al.,  
Defendants.

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CIVIL ACTION NO. 9:08-3704-HFF-BM

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff makes claims of conspiracy to deny his civil rights, prosecutorial misconduct, false imprisonment, legal malpractice, tampering with evidence, and theft by taking. Plaintiff is proceeding pro se.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the action be dismissed as to Defendants Leslie Simmons, the Oconee County Solicitor's Office, and E. Delane Rosemond without prejudice and without issuance and service of process for these defendants. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on November 25, 2008, and the Clerk of Court entered Plaintiff's objections to the Report on December 11, 2008. The Court has carefully considered the objections, but finds them to be without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules the objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of the Court that the action be **DISMISSED** without prejudice and without issuance and service of process as to Defendants Leslie Simmons, the Oconee County Solicitor's Office, and E. Delane Rosemond. Thus, the action shall proceed only as against Defendant Owens.

**IT IS SO ORDERED.**

Signed this 11th day of December, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within 30 (thirty) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.